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GO PET CLUB, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 YUNTEK INTERNATIONAL, INC. a
California corporation,

Plaintiff,

V.

GO PET CLUB, LLC,

Defendants.

CASE NO. 4:19-cv-02947-JSW

ANSWER TO UNVERIFIED COMPLAINT FOR PATENT INFRINGEMENT

1 Defendant PEL WHOLESALE, INC. D/B/A GO PET CLUB (“Defendant”) for itself and
2 for no other party, person or entity, and without waiver of any right or privilege, hereby submits
3 the following Answer to the unverified Complaint (the “Complaint”) of Plaintiff YUNTEK
4 INTERNATIONAL, INC. (“Plaintiff”):

INTRODUCTION

7 1. Defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations of Paragraph 1, and therefore denies them.

9 2. Defendant admits that it manufactures pet carriers and homes, including the Go Pet
10 Club Soft Crate. Defendant further admits that it sells its products, including the Go Pet Club Soft
11 Crate, online through retailers such as Amazon.com and Walmart.com.

12 ||| 3. Defendant denies each and every allegation in paragraph 3 of the Complaint.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

14 4. Defendant admits that it places products into the stream of commerce, with the
15 knowledge or understanding that such products are sold in the State of California, including in this
16 District, but denies that such products infringe U.S. Patent No. 6,715,446 (the “‘446 Patent”).
17 Defendant further admits that it maintains its headquarters and principal place of business within
18 the State of California and within in this District at 6818 Patterson Pass Road, Suite H, Livermore,
19 California 94550. Defendant denies that its acts have caused injury to Yuntek within this District.
20 The remaining allegations in paragraph 4 are legal conclusions to which no response is required.
21 To the extent that any remaining allegations are not legal conclusions, Defendant denies such
22 allegations.

23 5. Defendant admits that it maintains its headquarters and principal place of business
24 within the State of California and within in this District at 6818 Patterson Pass Road, Suite H,
25 Livermore, California 94550. Defendant further admits that it has a regular and established place
26 of business in this district. Defendant denies that it has and continues to commit acts of
27 infringement. The remaining allegations in paragraph 5 are legal conclusions to which no response
28 is required. To the extent that any remaining allegations are not legal conclusions, Defendant denies

1 such allegations.

2 6. The allegation in paragraph 6 that this case be assigned on a district-wide basis
3 pursuant to Civil L.R. 3-2(c) is a legal conclusion to which no response is required.

4 PARTIES

5 7. Defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations of Paragraph 7, and therefore denies them.

7 8. Defendant admits that it is a corporation organized under the laws of the State of
8 Texas with its headquarters located at 6818 Patterson Pass Road, Suite H, Livermore, California
9 94550.

10 GENERAL ALLEGATIONS

11 9. Defendant admits that a copy of what purports to be '446 Patent is attached to the
12 Complaint as Exhibit A. Defendant is without knowledge or information sufficient to form a belief
13 as to the truth of the remaining allegations of Paragraph 9, and therefore denies them.

14 10. Defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations of Paragraph 10, and therefore denies them.

16 11. Defendant denies each and every allegation in paragraph 11 of the Complaint.

17 12. Defendant admits that it sells and offers to sell its products, including the Go Pet
18 Club Soft Crate, online through retailers such as Amazon.com and Walmart.com, but denies that
19 such products infringe the '446 Patent.

20 13. Defendant admits that Plaintiff emailed Defendant on December 4, 2017, alleging
21 infringement of the '446 Patent by Defendant, but denies that it has and continues to commit acts
22 of infringement of the '446 Patent. The remaining allegations in paragraph 13 are legal conclusions
23 to which no response is required. To the extent that any remaining allegations are not legal
24 conclusions, Defendant denies such allegations.

25 FIRST CAUSE OF ACTION

26 (Infringement Of The '446 Patent)

27 14. Defendant repeats and incorporates its responses to the preceding paragraphs as if
28 fully set forth herein.

15. Defendant denies each and every allegation in paragraph 15 of the Complaint.
16. Defendant denies each and every allegation in paragraph 16 of the Complaint.
17. Defendant denies each and every allegation in paragraph 17 of the Complaint.
18. Defendant denies each and every allegation in paragraph 18 of the Complaint.
19. Defendant denies each and every allegation in paragraph 19 of the Complaint.
20. Defendant denies each and every allegation in paragraph 20 of the Complaint.

PRAYER FOR RELIEF

8 Paragraphs 1-5 set forth the statement of relief requested by Plaintiff to which no response
9 is required. To the extent a response is required, Defendant denies each and every allegation
10 contained in the remainder of the Complaint and denies that Plaintiff is entitled to any of the relief
11 requested in paragraphs 1-5 of its prayer for relief or to any other relief in any form whatsoever.

DEMAND FOR JURY TRIAL

13 Defendant joins in Plaintiff's request for a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES AS AGAINST ALL CAUSES OF ACTION

Pursuant to Federal Rule of Civil Procedure 8(c), without assuming any burden that they would not otherwise bear, and reserving the right to assert additional defenses, at law or in equity, which may now exist or in the future may become known or available as the result of discovery in this case, Defendant asserts the following defenses:

First Affirmative Defense

(Non-Infringement)

Defendant has not infringed and does not infringe any valid and enforceable claim of the
'446 Patent, directly or indirectly, literally or under the Doctrine of Equivalents.

Second Affirmative Defense

(Invalidity)

25 The claims of the '446 Patent are invalid for failure to satisfy one or more of the
26 requirements of 35 U.S.C. § 101, et seq., including but not limited to 35 U.S.C. §§ 101, 102, 103,
27 and/or 112.

Third Affirmative Defense

(Equitable Estoppel, Laches, Waiver, Acquiescence, And/Or Unclean Hands)

Plaintiff's claims for relief are barred in whole or in part by the equitable doctrines of estoppel, laches, waiver, acquiescence, and/or unclean hands.

Fourth Affirmative Defense

(35 U.S.C. § 287)

Any claim for damages for patent infringement by Plaintiff is limited, at a minimum, by 35 U.S.C. § 287 to those damages occurring only after notice of infringement.

Fifth Affirmative Defense

(Limitation On Damages Under 35 U.S.C. § 286)

Plaintiff's claims for monetary relief, if any, are limited by 35 U.S.C. § 286.

Sixth Affirmative Defense

(Failure To State A Claim)

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Seventh Affirmative Defense

(35 U.S.C. § 288)

Plaintiff is barred by 35 U.S.C. § 288 from recovering any costs associated with this action.

Eighth Affirmative Defense

(Adequate Remedy At Law)

Plaintiff is not entitled to injunctive relief because, *inter alia*, any injury to Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

Ninth Affirmative Defense

(Prosecution History Estoppel)

Plaintiff is estopped because of prosecution history estoppel and/or disclaimer from construing or interpreting any claims of the '446 Patent to cover or include, either literally or by application of the doctrine of equivalents, any acts of Defendant, by reason of the proceedings in the United States Patent Trade Office (PTO) during prosecution of the applications leading to the

1 issuance of the Patents-in-Suit, and admissions and representations made therein to the PTO by the
2 applicants, any disclosures, and/or language in the specifications of the Patents-in-Suit, and/or
3 limitations in the claims of the Patents-in-Suit.

4 **Tenth Affirmative Defense**

5 (No Willfulness)

6 Defendant is not willfully infringing and has not willfully infringed any claim of the '446
7 Patent.

8 **Eleventh Affirmative Defense**

9 (Plaintiff Not Entitled To Fees)

10 Plaintiff cannot prove that this is an exceptional case justifying an award of attorney's fees
11 against Defendant pursuant to 35 U.S.C. § 285.

12 **Twelfth Affirmative Defense**

13 (Ensnarement)

14 Plaintiff's claims of infringement under the doctrine of equivalents are barred under the
15 ensnarement doctrine, which bars Plaintiff from asserting an infringement theory under the doctrine
16 of equivalents that encompasses, or "ensnares," the prior art.

17 **COUNTERCLAIMS**

18 In accordance with Rule 13 of the Federal Rules of Civil Procedure, Defendant/
19 Counterclaim-plaintiff PEL WHOLESALE, INC. D/B/A GO PET CLUB ("GPC" or
20 "Counterclaim-plaintiff") incorporates by reference its responses to the Complaint stated above as
21 if fully set forth herein, and asserts the following counterclaims against Plaintiff/Counterclaim-
22 defendant YUNTEK INTERNATIONAL, INC. ("Yuntek" or "Counterclaim-defendant").

23 **PARTIES TO THIS COUNTERCLAIM**

24 1. Counterclaim-plaintiff is, and at all times mentioned herein was, a corporation,
25 incorporated under the laws of the State of Texas and authorized to do business in California, with
26 its headquarters located at 6818 Patterson Pass Road, Suite H, Livermore, California 94550.

27 2. Upon information and belief, as stated in its Complaint, Counterclaim-defendant is
28 a corporation organized under the laws of the State of California with its principal place of business

1 in Hayward, California.

2 **JURISDICTION AND VENUE**

3 3. These counterclaims arise under the Declaratory Judgment Act, 28 U.S.C. § 2201 et
4 seq. and the United States Patent Laws, 35 U.S.C. § 101 et seq.

5 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332,
6 1338, and 2202.

7 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)–(c) because, among
8 other reasons, Counterclaim-defendant brought suit alleging infringement of the '446 Patent in this
9 District.

10 **FIRST COUNTERCLAIM**

11 **Declaratory Judgment Of Non-Infringement Of The '446 Patent**

12 6. Counterclaim-plaintiff incorporates by reference the allegations of the preceding
13 paragraphs of its Counterclaims as if fully set forth herein.

14 7. An actual controversy has arisen and now exists among Counterclaim-plaintiff and
15 Counterclaim-defendant in that Counterclaim-defendant contends, and Counterclaim-plaintiff
16 denies that Counterclaim-plaintiff is directly infringing, either literally or under the Doctrine of
17 Equivalents, one or more of the claims of the '446 Patent by making, using, selling, and/or offering
18 for sale an infringing product within the United States with regard to any invention claimed by the
19 '446 Patent. Furthermore, Counterclaim-plaintiff denies that Counterclaim-plaintiff is directly
20 infringing, either literally or under the Doctrine of Equivalents, one or more of the claims of the
21 '446 Patent by importing an infringing product into the United States with regard to any invention
22 claimed by the '446 Patent.

23 8. Counterclaim-plaintiff has not and does not infringe any valid claim of the '446
24 Patent, either literally or under the Doctrine of Equivalents, by either making, using, selling, and/or
25 offering for sale an infringing product within the United States with regard to any invention claimed
26 by the '446 Patent. Counterclaim-plaintiff has not and does not infringe any valid claim of the '446
27 Patent, either literally or under the Doctrine of Equivalents, by importing an infringing product into
28 the United States with regard to any invention claimed by the '446 Patent.

9. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10. Counterclaim-plaintiff seeks a judicial determination and declaration of the respective rights and duties of the parties based on Counterclaim-plaintiff's contentions as set forth in the paragraphs above. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and duties regarding the non-infringement of the claims of the '446 Patent.

SECOND COUNTERCLAIM

Declaratory Judgment Of Invalidity Of The '446 Patent

11. An actual, continuing and justiciable controversy exists between Counterclaim-defendant and Counterclaim-plaintiff as to the validity of the claims of the '446 Patent because Counterclaim-defendant brought this action against Defendant alleging that Counterclaim-plaintiff infringes the '446 Patent, which allegation Counterclaim-plaintiff denies. Absent a declaration of invalidity, Counterclaim-defendant will continue to wrongly assert the '446 Patent against Counterclaim-plaintiff, and thereby cause Counterclaim-plaintiff irreparable injury and damage.

12. The claims of the '446 Patent are invalid for failure to satisfy one or more of the requirements of 35 U.S.C. § 101, et seq., including 35 U.S.C. §§ 101, 102, 103, and/or 112.

13. Counterclaim-plaintiff seeks a judicial determination and declaration of the respective rights and duties of the parties based on Counterclaim-plaintiff's contentions as set forth in the paragraphs above. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and duties regarding the invalidity of the claims of the '446 Patent.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim-plaintiff prays:

1. That an award/judgment be entered in favor of Counterclaim-plaintiff and against Counterclaim-defendant on each and every claim for relief of the Complaint and on each and every claim for relief of Counterclaim-plaintiff's Counterclaims;

- 1 2. That judgment be entered declaring the claims of the '446 Patent invalid;
- 2 3. That judgment be entered declaring that Counterclaim-plaintiff has not infringed the
- 3 '446 Patent;
- 4 4. That judgment be entered declaring that Counterclaim-defendant is precluded from
- 5 obtaining injunctive relief, money damages, costs, and/or attorneys' fees for any alleged
- 6 infringement by Counterclaim-plaintiff;
- 7 5. That Counterclaim-plaintiff be awarded its reasonable attorney's fees and costs; and
- 8 6. That the Court award such other and further relief as it deems just and proper.

9
10 Dated: September 10, 2019

ARENT FOX LLP

11 By: 
12 CRAIG A. GELFOUND
13 Attorneys for Defendant
14 PEL WHOLESALE, INC. D/B/A GO PET CLUB